



May 18, 2001

Ms. Elneita Hutchins-Taylor  
Attorney  
Cypress-Fairbanks Independent School District  
P.O. Box 692003  
Houston, Texas 77269-2003

OR2001-2063

Dear Ms. Hutchins-Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 147434.

The Cypress-Fairbanks Independent School District (the "district"), which you represent, received a request for the following:

1. any incident report made by Arnold Middle School (the "school") relating to an alleged incident of sexual misconduct (Exhibit 3);
2. the front page of the Criminal Incident Report made by law enforcement authorities as a result of the aforementioned alleged incident;
3. a written explanation why a possible criminal offense occurred and no policy agency was summoned to conduct an investigation;
4. any official school records documenting any alcohol or drug related incidents at the school for the 2000-2001 school year (Exhibits 4 and 5);
5. any police incident reports initiated by a governmental agency related to any alcohol or drug related incidents at the school;
6. If no official report was initiated by a governmental agency for a criminal offense, please advise in written correspondence the reason no offense report was generated and investigated by a police agency.

You state that the district is providing the requestor a copy of the school's Citations and Offense Report for the current school year. You state that the district does not receive copies of criminal incident reports generated by law enforcement agencies. You claim that the remainder of the requested information is excepted from disclosure under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), sections 552.114 and 552.026 of the Government Code. The requestor has also submitted comments to this office. *See* Gov't Code § 552.304. We have considered your claims and reviewed the submitted information.

Before we consider your raised exceptions, we note that the requestor seeks an explanation from the district by its request items 3 and 6. The Act applies only to information in existence at the time the governmental body receives the request for information. A governmental body need not create new information in response to a request. *See* Open Records Decision No. 452 at 2-3 (1986). Thus, the Act does not require the district to prepare the requested written explanations.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student."

*See* Open Records Decision Nos. 332 (1982), 206 (1978)<sup>1</sup>; *see also* 34 CFR 99.3 (defining “personally identifiable information” subject to withholding under FERPA to include “information that would make the student’s identity easily traceable”). You contend that “all of the documents give ‘personally identifiable’ student information.”

First, we address Exhibit 3. We find under FERPA that the district must withhold all of the information in Exhibit 3.

Second, we address the information contained in Exhibits 4 and 5. Both Exhibits contain information which identifies or tends to identify a student. Therefore, in accordance with Open Records Decision No. 634, we have marked for redaction certain information that we believe is made confidential by FERPA. Accordingly, you must withhold this marked information pursuant to FERPA.

In summary, you must withhold all of the submitted information contained in Exhibit 3 and all marked information in Exhibits 4 and 5. You must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

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<sup>1</sup>*But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student’s education records). *See also* Open Records Decision No. 431 (1985) (Public Information Act’s exceptions to required public disclosure do not authorize withholding of “education records” from adult student).

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/LM/seg

Ref: ID# 147434

Encl. Submitted documents

cc: Mr. Steve Smith  
10901 Mist Lane #7103  
Houston, Texas 77070  
(w/o enclosures)